

Exhibit 6



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

NETLIST INC., a Delaware
corporation,

Plaintiff,

vs.

SAMSUNG ELECTRONICS CO.,
LTD. a Korean corporation,

Defendant.

Case No. 8:20-cv-00993-MSC-ADS

JOINT STATUS REPORT

Hearing Date:
Joint Report Due:

Pursuant to this Court’s minute order dated November 13, 2023 (Dkt. 341), Plaintiff Netlist Inc. (“Netlist”) and Defendant Samsung Electronics Co., Ltd. (“Samsung”), by their undersigned attorneys, hereby file this Joint Status Report.

I. CASE STATUS

A. Prior District Court Proceedings

Netlist filed this case on May 28, 2020, alleging that Samsung had breached the parties’ Joint Development and License Agreement (“JDLA”) by, among other things, failing to supply Netlist with certain memory products (NAND and DRAM) on request. Dkt. 1. Netlist also sought a declaration that it had properly terminated the JDLA as a result of these breaches. *Id.* On August 16, the parties cross moved for summary judgment on the issues of breach and termination. Dkts. 142, 150. The Court

1 *connection with the collaboration. That's the joint development project."* *Netlist v.*
2 *Samsung*, No. 22-cv-293 (E.D. Tex.) Dkt. 210-2 (9th Cir. Hearing Tr. excerpt) at
3 15:20-21. If Samsung had told the Ninth Circuit that the license grant was not limited
4 to the joint development, the basis for its argument that the supply clause is implicitly
5 limited to joint development would have collapsed.

6 Samsung represented (as an undisputed fact) that "it considered the \$8 million
7 as consideration for Netlist's grant of patent licenses" Dkt. 168-2, fact #62.
8 However, in the Ninth Circuit, Samsung represented that "there's an \$8 million NRE
9 fee that's paid. It's clearly for the joint development project, but it doesn't say it's
10 specifically for the joint development project." *Netlist v. Samsung*, No. 22-cv-293
11 (E.D. Tex.) Dkt. 210-2 (9th Cir. Hearing Tr. excerpt) at 8:16-24.

12 Samsung's complete JDLA defense requires it to argue that a joint development
13 product limitation should be read into the supply clause, but this same limitation
14 should not be read into the license grant.¹ East Texas is the only forum in which this
15 litigation tactic of taking entirely opposite positions can be addressed, because the
16 scope of the license grant is not currently at issue here. There is pending briefing
17 before Judge Gilstrap seeking a finding that Samsung is estopped from claiming that
18 the license covers its commercial products. If this motion is granted, or if the East
19 Texas jury finds that the license does not include Samsung's commercial products
20 (consistent with Samsung's representations to the Ninth Circuit), the breach of
21 contract case before this Court becomes effectively moot.

22 **2. Netlist's Proposed Schedule If There Is No Stay**

23 If, however, the Court declines to stay this action, Netlist requests that the Court
24 set a trial date and proposes the dates set forth below consistent with this Court's
25

26 ¹ Samsung represents that Judge Gilstrap already decided the scope of the license
27 grant. Judge Gilstrap ruled the exact opposite: "So you've got a license -- Samsung's
28 got a license defense up until July 15th, 2020, and you don't have one after July 15th,
2020. What falls within that license as prescribe by the other terms of the JDLA is a
fact question." *Netlist, Inc.*, No. 2:21-CV-463-JRG (E.D. Tex.) Dkt. 426, 59:19-25.

1 default case schedule worksheet. In the event that this Court denies a stay, Netlist also
2 requests following:

3 ***Amended Pleadings.*** If the Court declines to stay this case and Judge Gilstrap
4 grants Samsung's motion to stay the Infringement Action, Netlist will file a motion
5 seeking leave to amend its pleadings to include a declaration regarding the scope of
6 Samsung's license. Samsung has already indicated it opposes this motion, allowing
7 it to continue to take entirely inconsistent statements.

8 ***Production of discovery from Eastern District of Texas.*** There is no need for
9 additional fact discovery in this case; however, if this case proceeds, Netlist will file
10 a motion seeking leave to cross-use of fact depositions and documents from the
11 Eastern District of Texas litigations (just as the parties have agreed to cross-use of
12 fact depositions and documents from this case in the Eastern District). Fact discovery
13 from the Eastern District of Texas is directly relevant to this dispute. For example,
14 Samsung's corporate representative on the JDLA in East Texas (Vice President
15 Indong Kim) testified that Samsung's failure to supply product to Netlist was
16 unethical and that he treated the supply obligation as applying to product beyond the
17 joint development project.

18 Samsung reports below that it will oppose the use of the testimony of its
19 corporate representatives as to JDLA issues from the Eastern District of Texas
20 proceeding. Samsung appears to believe corporate representatives have the right to
21 take entirely inconsistent factual positions in different courts without consequence
22 because discovery is closed. Fed. R. Civ. Pro. 32(a)(1)(3) definitively answers this
23 question: "an adverse party may use for any purpose the deposition of a party or
24 anyone who, when deposed, was the party's officer . . . or designee under Rule
25 30(b)(6)" "A deposition lawfully taken . . . in any federal- or state-court action
26 may be used in a later action involving the same subject matter between the same
27 parties, or their representatives or successors in interest, to the same extent as if taken
28 in the later action." Fed. R. Civ. Pro. 32(a)(8). In the Ninth Circuit, a corporation

cannot contradict the theory of facts presented by a Rule 30(b)(6) witness. *Snapp v. United Transp. Union*, 889 F.3d 1088 (9th Cir. 2018) (“[A] corporation generally cannot present a theory of the facts that differs from that articulated by the designated Rule 30(b)(6) representative....”).

Supplemental Expert Reports. Netlist will also seek leave to file supplemental expert reports, not to include new opinions, but to update prior opinions including based on information from the Eastern District.

Proposed case schedule:

Event	Date
Deadline to amend complaint to add declaration as to license scope	20 weeks before final pre-trial conference
Supplemental expert reports	18 weeks before final pre-trial conference.
Last day to hear arguments on whether the extrinsic evidence creates a genuine issue of material fact as to the meaning of JDLA § 6.2. ²	12 weeks before final pre-trial conference <ul style="list-style-type: none"> • Briefs due 5 weeks before hearing • Oppositions due 2 weeks after briefs are filed • Replies due 1 week after oppositions
Deadline to complete settlement conference	10 weeks before final pre-trial conference
Trial filings (first round) <ul style="list-style-type: none"> • Motions in Limine • Memoranda of Contentions of Fact and Law [L.R. 164] • Witness Lists [L.R. 165] • Joint Exhibit List [L.R. 166.1] • Joint Status Report Regarding Settlement 	3 weeks before final pre-trial conference

² The Ninth Circuit explicitly remanded to this Court “to consider in the first instance whether the extrinsic evidence “creates a genuine issue of material fact” as to the provision's meaning.”. *Netlist Inc. v. Samsung Elecs. Co.*, No. 22-55209, 2023 WL 6820683, at *2 (9th Cir. Oct. 17, 2023)

1 Netlist's assertion about the scope of the license is plainly incorrect, as Judge Gilstrap
2 has already determined, *see supra* at 15-16.

3 Nor is there any conflict in asserting that the patent license is broad but the
4 supply obligation is limited to the Joint Development Project, as there were two
5 distinct purposes of the JDLA as expressed therein: the joint development of the new
6 NVDIMM-P product, and (2) patent cross-licensing. Indeed, the Ninth Circuit agreed
7 that these are the two stated purposes of the JDLA, and that "each substantive section
8 corresponds entirely to *one of the two goals*." Mem. at 3, ECF No. 334 (emphasis
9 added). Given those two separate purposes, it is entirely reasonable that the supply
10 obligation of Section 6.2 is limited to joint development, whereas the licenses are not.
11 And in all events, there is no reason to inject this issue into the proceedings before
12 this Court, particularly when Judge Gilstrap has already decided the scope of the pre-
13 termination license.

14 For these reasons, any attempt by Netlist to thwart the mandate of the Ninth
15 Circuit and have the issue of contract breach and termination decided in the Eastern
16 District of Texas, rather than this Court, where Netlist first filed its contract claims
17 against Samsung over three years ago, should be denied.

18 **2. Samsung's Response to Netlist's Requests for Additional** 19 **Relief**

20 Samsung will also oppose the other relief that Netlist intends to request, all of
21 which is an improper attempt to circumvent deadlines in this case that are long past.
22 Netlist states that in the event its motion for a stay of this case is not granted, it intends
23 to request that the Court permit it to file an amended pleading to add a request for
24 declaratory relief on the scope of Samsung's license, reopen fact discovery to allow
25 Netlist to use fact depositions and documents from the Eastern District of Texas
26 litigations, and reopen expert discovery to submit a supplemental expert report. Since
27 such relief would require modifying this Court's prior scheduling order, Netlist must
28

1 show “good cause.” Fed. R. Civ. P. 16(b)(4). But Netlist has failed to cite any
2 justification for the relief sought, let alone anything approaching good cause.

3 ***Amended Pleadings.*** The Court’s February 12, 2021 Order re: Jury Trial sets
4 out April 5, 2021 as the last date to hear a motion to amend pleadings. Order, ECF
5 No. 41. Netlist’s request to amend its pleadings at this stage to seek a declaration on
6 the scope of the licenses should summarily be denied as untimely under the Court’s
7 scheduling order. Netlist has made no effort to demonstrate good cause here. Nor
8 could it satisfy this standard. Netlist had every opportunity to seek a declaration on
9 the scope of the license in this case. It chose not to do so and instead chose to litigate
10 the scope of the pre-termination license in Texas, where—despite Netlist’s attempt to
11 misrepresent the Texas court’s rulings, *see supra* at 19—the court ruled against Netlist
12 on that issue. Netlist must live with that.

13 ***Use of Discovery from Eastern District of Texas.*** Fact discovery closed in this
14 case years ago, on August 16, 2021. *See* Order re: Jury Trial, ECF No. 41. Now
15 Netlists seeks to expand the record by porting over wholesale deposition transcripts
16 and documents obtained in discovery in the Eastern District of Texas. Yet again,
17 Netlist has made no effort to show good cause for reopening discovery. Netlist’s
18 request to expand the record in this case with discovery from the Eastern District of
19 Texas is a blatant attempt to circumvent prior discovery orders in this case.

20 For example, in this case, Magistrate Judge Spaeth denied Netlist’s motion to
21 compel the deposition of Jung-Bae Lee on apex grounds. Minutes of Hearing, ECF
22 No. 103. Netlist, however, successfully compelled Dr. Lee’s deposition in the Eastern
23 District of Texas case by arguing that Dr. Lee had “personal knowledge of Netlist’s
24 technologies, patent portfolio, product design, and the parties’ history of license
25 negotiations” that Netlist said was relevant to “Netlist’s willful infringement case and
26 Samsung’s patent license defenses” and Dr. Lee did not qualify for apex doctrine
27 protection. *See* 2:21-CV-00436, ECF No. 134 at 1-7 (public version of ECF No. 121)
28 at 14-19).

1 Netlist's reference to an agreement to cross-use fact depositions from this case
2 in the Eastern District of Texas is misleading. There Samsung agreed to produce
3 certain deposition transcripts from this case in exchange for Netlist's agreement, *inter*
4 *alia*, not to take certain depositions again. What Netlist seeks here is the ability to use
5 deposition transcripts from the Eastern District of Texas in place of depositions it was
6 expressly prohibited from taking in this case.⁴ Netlist also seeks to use depositions
7 taken in the Texas litigation of witnesses such as Indong Kim who were already
8 deposed in this case, apparently because Netlist feels the need to augment the record
9 in this case despite having already had a full opportunity to depose the witnesses in
10 this case.⁵

11 Netlist's attempt to expand the discovery record would—in addition to end
12 running the discovery orders in this case—create unfair prejudice and cause
13 unnecessary delay, as there was no reason to anticipate that discovery in Texas would
14 be used in this case given that discovery in this case was closed, and the parties would
15 have to be able to engage in further discovery here to respond to the discovery in
16 Texas. Moreover, Netlist has failed to show that it did not have an adequate
17 opportunity to conduct discovery in this case. Thus, any request by Netlist to reopen
18 fact discovery should be denied.

19 ***Updated Expert Reports.*** Netlist opaquely asks the Court to grant leave to file
20 “supplemental expert reports, not to include new opinions, but to update prior
21 opinions including based on information from the Eastern District.” *Supra* at 6.
22 Netlist fails to explain what issues these could possibly be or why they are relevant to
23 the issues in the Ninth Circuit's mandate, and there is no reason for the parties to
24 undertake the vast expense of another round of expert discovery. The expert
25 discovery cut off in this case likewise passed years ago. Because there should be no

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27 ⁴ As discussed above, the Court can and should decide the meaning of Section 6.2
on the original summary judgment record before it.

28 ⁵ Netlist also mischaracterizes the testimony of Mr. Kim in support of its attempt to
open the discovery record in this case.

1 new discovery, there is no need to update any expert reports. Nor has Netlist identified
2 any justification for supplementing expert reports, let alone a justification satisfying
3 the good cause standard.

4 3. **Samsung's Proposed Schedule**

5 In view of the Ninth Circuit's mandate, this Court ordered the parties to
6 "propos[e] a schedule for further proceedings." The threshold issue before the Court
7 is whether the extrinsic evidence creates a genuine issue of material fact as to the
8 meaning of Section 6.2 of the JDLA. As this issue was already briefed once, there is
9 adequate evidence in the summary judgment record for the Court to make this
10 determination. Because the prior briefing did not focus solely on the issue the Ninth
11 Circuit has now mandated be considered, Samsung proposes targeted supplemental
12 briefs to specifically address the meaning of Section 6.2, to be concurrently filed
13 within 30 days of the Court's decision following the filing of this Joint Status Report,
14 with each side having the right to file a responsive brief 15 days thereafter. This
15 supplemental briefing will allow the Court to focus its attention on the relevant
16 evidence and law and comply with the Ninth Circuit's mandate.

17 Samsung contends that the extrinsic evidence in the record demonstrates there
18 is no genuine issue of material of fact as to the meaning of Section 6.2, that Section
19 6.2 is limited to the supply of DRAM and NAND as raw materials for the parties'
20 joint development project, and that the Court should adopt Samsung's interpretation
21 as a matter of law. If the Court adopts Samsung's interpretation of Section 6.2, there
22 is no need for a trial on whether any alleged breach of Section 6.2 is material, and
23 Netlist's request for a declaration that it validly terminated the JDLA must be denied.
24 Samsung proposes that if the Court declines to adopt its interpretation of Section 6.2
25 as a matter of law, then at that time the Court should set the case for a jury trial on the
26 issues of interpretation in light of the extrinsic evidence, breach and materiality as
27 soon as the Court's schedule permits allowing for pre-trial filings on a schedule in
28 accordance with the Court's Order re: Jury Trial, ECF No. 41.

1 **III. ALTERNATIVE DISPUTE RESOLUTION**

2 The parties have met and conferred regarding the Court's offer to stay this case
3 for sixty days pending alternative dispute resolution. The parties do not believe that
4 settlement discussions would be productive at this time.

5 Respectfully submitted,

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7 Dated: November 27, 2023

Irell & Manella, LLP

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9
10 By: /s/ A. Matthew Ashley

11 A. Matthew Ashley

12 Attorney for Plaintiff
13 Netlist, Inc.

14 Dated: November 27, 2023

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15
16
17 By: /s/ Michael Yoder

18 Attorneys for Defendant
19 Samsung Electronics Co., Ltd.